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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Joint Petition for
Rulemaking to Establish Rules
for Subscriber Access
to Cable Home Wiring for the
Delivery of Competing and
Complementary Video Services

RM-8380

REPLY COMMENTS OF PACIFIC BELL AND NEVADA BELL

Pacific Bell and Nevada Bell file these reply comments supporting the petition for rulemaking for subscriber access to cable home wiring. Twenty-one parties filed comments in this proceeding. All but four indicated support for a Commission rulemaking proceeding.¹ In fact, the broad consensus was to use telephone inside wiring rules as the template for cable home wiring rules. Parties as diverse as Liberty Cable, Wireless Cable Association International and Utilities Telecommunications Council supported the telephone wiring model. The concerns raised by opponents are easily overcome. We therefore advocate that the Commission open a rulemaking proceeding on access to inside wiring, without regard for the type of signals carried over that wire.

¹ Those four are Time Warner, NCTA, Continental Cable, and joint commenters Cablevision Industries, Multivision Cable TV and Providence Journal Co.

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I. THE COMMISSION HAS AUTHORITY TO ISSUE PRE-TERMINATION RULES ON CABLE WIRING.

Commenters opposing this petition for rulemaking argue that the Commission lacks jurisdiction to implement home wiring rules that apply before subscriber termination of cable service because Congress has only authorized the Commission to prescribe rules concerning the disposition of residential cable wiring after a subscriber to a cable system terminates service.²

However, these opponents have taken the legislative history out of context. Congress has not expressed any intent to deprive the Commission of jurisdiction over pre-termination regulation of home wiring rules. Instead, Congress has attempted to spur the Commission to implement regulations which would reduce anti-competitive barriers to subscriber control of cable home wiring.

Commenters rely on the section of the 1992 Cable Television Consumer Protection and Competition Act ("1992 Act") which requires the Commission to promulgate rules regarding the termination of cable service.³ The plain language of the statute⁴ does not limit the Commission's authority to just post-

² NCTA at 3, Time Warner at 3.

³ NCTA at 3; Continental at 3, Time Warner at 3.

⁴ 47 U.S.C.A. §544 (i) states "Within 120 days after October 5, 1992, the Commission shall prescribe rules concerning the disposition, after a subscriber to a cable system terminates service, of any cable installed by the cable operator within the premises of such subscriber."

termination cable service, it merely requires that rules regarding termination be promulgated by a specific date.

The legislative history of this section reflects the Congress' intent to prioritize the Commission's rulemaking so that subscribers who terminate cable service can protect their "right to acquire wiring that has been installed by the cable operator in their dwelling unit" and so that consumers could "utilize the wiring with an alternative multichannel video delivery system and avoid any disruption the removal of such wiring may cause."⁵ No limits to the Commission's rulemaking authority are stated.

The Senate Report of the 1992 Act more directly addresses the Committee's thoughts on cable wiring prior to termination. In this report, the Committee explains that the Commission permits consumers to remove, replace, rearrange, or maintain telephone wiring inside the home even though it might be owned by the telephone company. The Senate Report states:

The Committee thinks that this is a good policy and should be applied to cable. For cable, however, the FCC should extend its policy to permit ownership of the cable wiring by the homeowner. In doing this, the Committee urges the FCC to adopt policies that will protect consumers against the imposition of unnecessary charges, for example, for home wiring maintenance. The FCC should also require cable operators to describe clearly options concerning home wiring maintenance.⁶

⁵ H.R. 628, 102d Cong., 2d Sess. p. 118 (1992).

⁶ S. 92, 102d Cong., 1st Sess. at 23 (1991).

It is apparent from the Senate report that Congress wanted the Commission to promulgate rules concerning cable wiring maintenance issues, which would arise prior to the termination of service by a customer. The Senate Report, clearly expresses its preference for both Commission regulation prior to termination and for the Commission subjecting cable to similar rules as telephone inside wire.

Even without this clear pronouncement by the Senate Report in favor of rules prior to the termination of cable service, an examination of the legislative history of the 1992 Act ("The Cable Television Consumer Protection and Competition Act") as a whole reflects the overriding Congressional purpose to promote competition in the multichannel video marketplace.⁷ With these goals in mind, it is implausible to suggest that Congress wanted to circumscribe the Commission's ability to regulate only post-termination cable service.

Time Warner also uses a section of the 1984 Cable Communications Policy Act ("1984 Cable Act") which prohibits subjecting cable systems to regulation as a common carrier or utility by reason of providing cable service, in order to oppose the regulation of pre-termination cable service.⁸ Time Warner argues that this more specific provision takes precedence over the general authority to regulate the industry bestowed upon the

⁷ S. 92, 102d Cong., 1st Sess. at 1 (1991).

⁸ Time Warner at 8-9. See 47 U.S.C.A. § 541 (c) (1991).

Commission by the Communications Act of 1934. First of all, the prohibition does not state that cable operators cannot be regulated at all, it only states that they should not be treated as common carriers. Nothing in the legislative history mentions a prohibition on agency regulations regarding residential cable wiring.⁹

Last, several commenters maintain that the Commission, itself, has determined that it lacks statutory authority to issue regulations prior to termination of cable service.¹⁰ In MM Docket 92-260, the Commission stated that it is not "necessary or appropriate under the statute to apply [these rules] before the point of termination."¹¹ However, this does not indicate an intention to forever preclude itself from any type of regulation of pre-termination cable service. In the next paragraph of the order, the Commission (in response to arguments that cable wiring should be treated in parity with telephone wiring) decided that "because of the time constraints under which we must promulgate rules as required by the Cable Act of 1992, we decline to address such rule proposals in this

⁹ H.R. 934, 98th Cong., 1st Sess. § 621 (1984), 1984 U.S.C.C.A.N. 4655, 4697.

¹⁰ Continental at 1-2; Time Warner at 4-5.

¹¹ Implementation of the Cable Television Consumer Protection and Competition Act of 1992, MM Dkt. No. 92-260, Report and Order, 8 F.C.C. Rcd. 1435 (1993) at para. 5.

proceeding."¹² The Commission merely lacked sufficient time to consider additional rules in that proceeding.

After reviewing the legislative history, it is clear that the Commission would not be exceeding its statutory authority if it were to initiate a rulemaking regarding access to cable home wiring prior to the termination of service. Opponents draw illogical conclusions from the legislative history and the relevant Commission order by taking statements out of context. Neither the plain language of the statute, nor the underlying legislative history of the 1992 Act, reflect any intention on the part of Congress to circumscribe the Commission's authority in this area. On the contrary, the various Committees' reports reveal the opposite intent, that is, to encourage the Commission to stimulate competition in this area, before and after the termination of service.

II. REMEDIES ARE AVAILABLE TO SOLVE THE SIGNAL LEAKAGE AND DEGRADATION OF SERVICE PROBLEMS.

NCTA, Cablevision Industries and Time Warner raise the issue of signal leakage.¹³ They argue that consumer control over the wiring will add to signal leakage. Further, they point out that determining the entity creating signal leakage will be difficult if there is joint use of cable home wiring. None of these concerns are supportable.

¹² Id. at para. 6.

¹³ NCTA at 7, Cablevision at 4, Time Warner at 23.

NCTA's concern about consumer control over wiring contributing to signal leakage is a red herring. In its Report and Order in the cable home wiring docket, MM Docket No. 92-260, the Commission allowed subscribers to gain control over cable wiring thirty days after termination of service (assuming that a cable company did not remove the wiring during that time period). In that docket, many parties had raised the issue of signal leakage. Therefore, the Commission determined that customer access to this wiring at the conclusion of thirty days would not be harmful to the public. Under the rules proposed in the present proceeding, customer control over the wiring would simply be advanced so that they would have control during the course of service, and not just upon termination. Because timing does not affect the signal leakage issue, it should not matter whether customer control is at termination of service or upon installation of service.

Further, the Commission has already promulgated regulations addressing responsibility for signal leakage. Every cable operator is responsible for preventing signal leakage. Subpart K of Part 76 provides the standards and tests with which a cable operator must comply to ensure safety. For example, Section 76.614 provides that cable television operators transmitting in certain frequency bands "shall provide for a program of regular monitoring for signal leakage by substantially covering the plant every three months."¹⁴ This

¹⁴ 47 C.F.R. § 76.614.

section also requires the cable operator to maintain a log of each incident of leakage, the source, when it was repaired, and the probable cause of the leakage. This monitoring ensures that signal leakage does not become a problem in any territory.

There are other ways to minimize signal leakage in a competitive environment. First, there are technological solutions. If multiple providers operate in the same territory, the issue can arise as to which providers' signal is leaking.¹⁵ For our California First program, we will use a leakage detection device calibrated to identify Pacific Bell's RF carrier signal. Therefore, during our regular monitoring, we will be able to determine what signals are generated from our service, as opposed to those of some alternate provider.

Second, there are operational methods to reduce RF leakage in a competitive environment. The Commission could require that a new service provider, who will be utilizing the existing cable home wiring in a particular house, must cap the existing wiring at the demarcation point when the new service is hooked up. Physically capping the wiring of the alternate service would be a simple, and inexpensive, way to ensure that RF leakage from the demarcation point does not occur in a competitive environment.

¹⁵ The actual issue raised by Continental and NCTA is in determining the source of RF leakage when two providers are using the same cable wiring. Pacific Bell and Nevada Bell agree that it would be technologically difficult for 2 providers to share the same cable wiring.

III. DEGRADATION OF SERVICE

Continental Cablevision argues that pre-termination control over cable home wiring will lead to degradation of service for other subscribers and aggravation of theft of service concerns.¹⁶ Of course, Continental cannot give specifics. Arguments relating to degradation of service and network harm were similarly made when telephone inside wire was deregulated. As the Commission correctly found in Docket 88-57, these concerns were unfounded.¹⁷

Similarly, the Commission need not address the complex issues as to ownership of wire¹⁸. In the telephone inside wire proceeding, the Commission did not find it necessary to decide on ownership. It simply mandated control over and access to inside wiring, regardless of the ownership.¹⁹ A similar decision for cable wiring will permit the expeditious resolution of cable wiring issues as well.

IV. CONCLUSION.

Because the consensus garnered from the comments filed in this proceeding indicates widespread support for a Commission

¹⁶ Continental at 6.

¹⁷ Review of Sections 68.104 and 68.213 of the Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network, 5 FCC Rcd 4686 (1990) at para. 24.

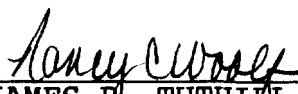
¹⁸ Continental at 7, Time Warner at 7

¹⁹ Id. at fn. 23.

rulemaking as to subscriber control and access over existing cable home wiring, the Commission should adopt a rulemaking. Such rulemaking should address the parity issues necessary for cable and telephone wire. As the Commission is aware, recent announcements about provision of telephone service over cable lines underscores the necessity for this type of rulemaking.²⁰ The Commission must recognize that different rules for cable wiring and telephone wiring have no place on the communications superhighway. Parity must be attained.

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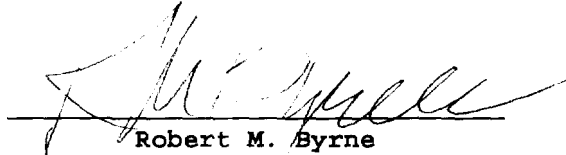
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²⁰ MCI to Go After Local Phone Monopolies, Los Angeles Times, December 31, 1993.

CERTIFICATE OF SERVICE

I, Robert M. Byrne, hereby certify that copies of the foregoing "REPLY COMMENTS OF PACIFIC BELL AND NEVADA BELL" re RM 8380, were served by hand or by first-class United States mail, postage prepaid, upon the parties appearing on the attached service list this 19th day of January, 1994.

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